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EEOC and Waters, et al. v. Jack Marshall Foods, Inc., d/b/a Kentucky Fried Chicken

Keywords

EEOC and Waters, et al., Jack Marshall Foods, Inc., d/b/a Kentucky Fried Chicken, 1:09-cv-00160-WS-N, Consent Decree, Hostile Work Environment, Sexual Harassment, Sex, Female

Tiffany Scott, Elizabeth Watson, Whitney Thames, Tonya Dortch, Erica Fountain, Rhonda Johnson, Adrienne Waters and Tieasha Salter pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *e seq.*, as amended by the Civil Rights Act of 1991, and pursuant to the laws of the State of Alabama. The Plaintiff-Intervenors allege that Jack Marshall subjected them to a hostile work environment based on sex by employees at its Monroeville, Alabama store. Defendant strongly denies the allegations and claims contained in Commission's Complaint and the Plaintiff-Intervenors' Complaint.

After a period of extensive discovery and to avoid the uncertainties and costs of litigation, the EEOC and Jack Marshall (collectively referred to as the "Parties") have decided to resolve this matter through the entry of this Consent Decree. It is understood that the entry of this Consent Decree does not constitute an admission by Jack Marshall of any violation of Title VII, §1981, or any provisions of Alabama law, and that all allegations of liability are expressly denied by Jack Marshall.

The Parties stipulate to the jurisdiction of the Court and waive a hearing and the entry of findings of fact and conclusions of law.

This Consent Decree constitutes the complete agreement among the Parties with respect to matters referred to herein. No waiver, modification, or amendment of any provision of this Decree shall be effective unless made in writing, approved by all Parties to this Decree, and approved by the Court or ordered by the Court. This Decree is final and binding upon the Parties, their agents, successors, and assigns.

II. GENERAL PROVISIONS

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED that:

- A. This Court has jurisdiction over the parties and the subject matter of this action.
- B. The Consent Decree ("the Consent Decree") is entered into by the EEOC and Jack

Marshall. The Consent Decree, and its terms, shall be final and binding on the EEOC and Jack Marshall, including its present and future representatives, agents, directors, officers, assigns and successors and all persons in active concert or participation with it.

C. The Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Case No.: CV-09-160-WS-N. The Decree fully and completely resolves all claims arising out of or contained in the following charges of discrimination:

Adrienne Waters	Charge No.: 420-2007-04135
Chiquita Bradley	420-2007-04836
Aquinda Jackson	420-2007-04424
Chanell Grace	420-2007-00657
Tiffany Scott	420-2007-04834
Tieasha Salter	420-2007-04391
Elizabeth Watson	420-2007-04832
Tonya Dortch	420-2008-01092
Whitney Thames	420-2007-04835

The Consent Decree does not affect any other administrative charges which may be pending with the EEOC or any other cases pending in this or any other court. The EEOC warrants that Jack Marshall has been served with notice of all pending sexual harassment charges regarding its Monroeville store. The Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as an admission by Defendant of any culpable conduct or of a violation of Title VII and shall not be used as evidence of a violation of Title VII in any subsequent action against Defendant. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event that any party is found to be in contempt of the Consent Decree.

D. The Consent Decree shall be filed in the United States District Court for the Southern District of Alabama, and shall continue to be in effect for a period of thirty (30) months from the date the Consent Decree is entered by the Court.

E. The Court retains jurisdiction over this case for the next thirty (30) months to enforce the terms of the Consent Decree.

F. The Consent Decree shall apply to the Defendant's operations, and all employees,

including temporary and contract employees, except as stated in Section VII.

G. The Commission has identified persons it alleges to be victims of discrimination in certain Jack Marshall facilities during the period 2006 through 2008. In settlement of the claims of these class members, Jack Marshall agrees to pay the lump sum of one million fifty-two thousand dollars (\$ 1,052,000.00). This amount represents the settlement of all claims of violations of Title VII by these individuals and includes compensatory damages, attorneys fees and costs. Payment to individual claimants who are also represented by private counsel shall be made through their counsel after execution of separate releases. Payment to non-represented claimants shall be made to the address specified by the Commission after each has an opportunity to confer with counsel and execute a release. The Commission is not a party to any of these releases.

H. Defendant shall mail a photocopy of the check to the attention of the Regional Attorney, Equal Employment Opportunity Commission, Birmingham District Office, 1130 – 22nd Street South, Suite 2000, Birmingham, Alabama 35205 at the time that the check is mailed. The parties agree that the monies paid in settlement of this case are for asserted emotional distress sustained by each Individual Plaintiff as a result of the conduct complained of in the Complaints. Accordingly, no withholdings shall be made from any of the payments. Jack Marshall shall report all monetary payments to the Individual Plaintiffs under this Decree on IRS Form 1099.

I. The payments made shall be in full settlement of claims of sex discrimination against Jack Marshall which is the basis of the Consent Decree, alleged in the EEOC Charges filed by Adrienne Waters, Tieasha Salter, Tiffany Scott, Chiquita Bradley, Aquinda Jackson, Chanell Grace, Elizabeth Watson, Tonya Dortch, and Whitney Thames and raised in the EEOC's Complaint and the Plaintiff-Intervenor Complaint.

III. GENERAL INJUNCTIVE RELIEF

A. Sexual Discrimination: Jack Marshall and its officers, agents, management (including supervisory employees), successors, and assigns, and all those in active concert or participation with them, or any of them, are enjoined from: (a) discriminating against employees on

the basis of sex; (b) engaging in or being a party to any action, policy, or practice that is intended to or is known to them to have the effect of harassing or intimidating any female employee on the basis of sex; and/or (c) creating, facilitating, or tolerating the existence of a work environment that is sexually hostile to female employees. Provisions of this Consent Decree shall not abrogate a complaining party's right or obligation to file a timely charge of discrimination under Title VII.

B. Retaliation: Jack Marshall and its officers, agents, management (including supervisory employees), successors, and assigns, and all those in active concert or participation with them, or any of them, are enjoined from: engaging in, implementing, or tolerating any action, policy, or practice with the purpose of retaliating against any current or former employee of Jack Marshall because he or she opposed any practice made unlawful under Title VII, filed a charge of discrimination challenging any such practice, testified, or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Jack Marshall), proceeding, hearing in connection with this cases and/or relating to any claim of discrimination under Title VII, was identified as a possible witness in this action, asserted any rights under this Decree, or sought and/or received any monetary and/or non-monetary relief in accordance with this Decree or any subsequent modification.

C. Jack Marshall shall remove any negative information in the personnel files of the Individuals Plaintiffs which information is related to the alleged discrimination and/or retaliation they experienced at the Monroeville, Alabama, facility.

D. Jack Marshall shall develop policies, procedures, practices and programs that ensure distribution and dissemination of its policies, procedures, practices and programs to all its employees, supervisors, and managers. Defendant Jack Marshall shall develop policies, procedures, practices and programs which ensure that all employees, supervisors and managers are encouraged and know how to report sexual misconduct.

E. Jack Marshall shall comply fully with all provisions of the Consent Decree and Title VII. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit

the obligations of Defendant Jack Marshall under Title VII or the EEOC's authority to process or litigate any charge of discrimination which may be filed against Defendant Jack Marshall in the future.

IV. SPECIFIC INJUNCTIVE RELIEF

A. Appointment of Ombudsperson

1. Consistent with the purposes of this Decree to eradicate discrimination and retaliation, and to enable Jack Marshall to be a model employer in the area of anti-discrimination and equal employment opportunity, within sixty (60) days of the entry of the Decree, Jack Marshall shall designate its Vice-President of Operations as the official company Ombudsperson. In the capacity as Ombudsperson, the Vice-President shall take action to acquire knowledge, information and resources in the areas of Title VII, sex discrimination, harassment, and retaliation. Jack Marshall shall bear all costs associated with the designation, selection, training and retention of the Ombudsperson and the performance of its duties during the term of this Decree.

2. The Ombudsperson's responsibilities shall include:

- a. Reviewing Jack Marshall's policies and procedures and modifying them, as necessary to ensure effective investigations of discrimination and retaliation complaints;
- b. Ensuring training for all employees on Jack Marshall's policies and procedures against discrimination and retaliation and all supervisors and managers on recognizing discrimination and retaliation and responding to such complaints thereof.
- c. Directing Jack Marshall's response to any complaints or inquiries regarding sexual discrimination or harassment to ensure an adequate response and to prevent retaliation against employees who complain or inquire about discrimination or retaliation;
- d. Monitoring Jack Marshall's disciplinary policies for potential or actual disparate treatment in the distribution of discipline and/or the resolution of grievances;
- e. Reviewing and/or modifying Jack Marshall's discipline policies to hold employees and managers accountable for failing to take appropriate action and/or for engaging in other conduct prohibited under this Decree;
- f. Providing feedback on the evaluation of managers and supervisors in the area of anti-discrimination/equal employment opportunity;

- g. Preparing and submitting reports to the Commission, as required by this Decree; and
- h. Otherwise ensuring compliance with the terms of this Decree and Title VII.

B. Review and Modification of Policies

1. With the assistance of the Ombudsman, Jack Marshall shall review its existing policies addressing discrimination, harassment, and retaliation and shall revise them, as necessary, to comply with the requirements set forth below. The finalized policy shall, at a minimum, include:

- a. A strong and clear commitment to a workplace free from sexual discrimination, harassment, and retaliation;
- b. A clear and comprehensive description, including concrete examples, of prohibited sexual harassment and retaliation;
- c. A description of the possible consequences that will be imposed upon violation of the policy against discrimination, harassment and retaliation;
- d. A statement encouraging employees to come forward if they believe that they have been the victim of sex discrimination, harassment, or retaliation;
- e. An assurance that persons who in good faith complain about discrimination or retaliation they experience or witness will not be the subject of retaliation;
- f. A clearly described complaint process that provides multiple accessible avenues of complaint;
- g. Assurances that the employer will protect the confidentiality of discrimination complaints to the extent possible;
- h. A complaint process that provides a prompt, thorough, and impartial investigation;
- i. A system for tracking down and providing follow-up on complaints and/or inquiries regarding discrimination, harassment and/or retaliation;
- j. Assurances that Jack Marshall will take immediate and appropriate corrective action if it determines that discrimination, harassment and/or retaliation have occurred;
- k. The contact information, including name, address, and telephone number of persons both internal (e.g. Jack Marshall Ombudsman, human resource personnel or managers) and external (e.g. EEOC) to whom employees may report complaints of discrimination, harassment or retaliation at any time without fear of reprisal. The contact information shall be visibly posted in an area accessible to all employees and placed in the employee handbook;
- l. A clear and comprehensive description of the specific responsibilities of Jack Marshall's supervisory and managerial employees when they witness or learn of

discrimination, harassment and/or retaliation and/or receive a complaint and/or inquiry regarding discrimination, harassment and/or retaliation; and

m. A clear and comprehensive description of the consequences for Jack Marshall's supervisory and managerial employees who fail to perform their responsibilities when they witness or learn of discrimination, harassment and/or retaliation and/or receive a complaint and/or inquiry regarding discrimination, harassment and/or retaliation.

A copy of the reviewed/revised policies in compliance with the above requirements shall be submitted to the Commission and distributed to all Jack Marshall employees within sixty (60) days of the Effective Date of this Decree.

C. Training

1. Jack Marshall will present to all of its current employees at least one hour of mandatory equal employment opportunity training, once every six months for the duration of this Decree. This training shall be in person, by video recording, or interactive training, accompanied by materials prepared by the consultants/lecturers experienced in the subject matter, and shall educate the employees about the problems of discrimination in the workplace. The purpose of the training shall be to give the participants a thorough understanding of discrimination and harassment issues, including but not limited to theories of liability under Title VII, sources of legal protection for victims of discrimination and harassment, and the employer's obligation to take preventive, investigative, and remedial action with respect to discrimination and harassment complaints, and to review company policies (including discipline policies) and practices which can result in discrimination, harassment, or retaliation.

2. As part of the resolution of this matter, all Jack Marshall's managerial and home office employees were required to attend training on their obligations and responsibilities under Jack Marshall's policies and procedures. This training was provided on March 10, 2010. Jack Marshall agrees to provide this separate management training annually during the term of this Decree.

3. Jack Marshall will retain and pay for a qualified consultant/lecturers, legal counsel or videotapes for purposes of this periodic training. Jack Marshall shall submit the name(s), address(es), telephone number(s) and resume(s) of the proposed consultant/lecturer(s) for

management training, together with the dates of the proposed training session and an outline of the contents of the training to the Commission.

D. Defendant Jack Marshall shall memorialize all reports and complaints by employees of sexually inappropriate behavior in writing, obtain written statements, make written findings of facts (including the names and contact information for witnesses) and make written recommendations and/or determinations. These, and any other documents generated by or related to a sexual misconduct investigation, shall be retained in an independent sexual misconduct file maintained by department of human resources/personnel for a period of four years.

E. Jack Marshall shall not retaliate against any person because of that person's complaint of discrimination, opposition to any practice made unlawful under Title VII, or filing of a charge, giving of testimony or assistance, or participation in any manner in any investigation, hearing or proceeding under Title VII.

F. Any identified potential class member or Plaintiff-Intervenor shall instruct her employer or potential employer to contact Phillip Marshall at (205) 553-8621 as to any information concerning her employment with Defendant. Jack Marshall shall not divulge, directly or indirectly, to any employer or potential employer of Plaintiff-Intervenors or any identified potential class member any of the facts or circumstances related to the underlying charges of discrimination against Jack Marshall, or the lawsuit resulting from the heretofore referenced charges of discrimination or any of the events relating to Plaintiff-Intervenors' or any identified potential class member's participation in the litigation of this matter. Defendant shall not be responsible for any responses to inquiries from an employer or prospective employers if not made directly to Phillip Marshall.

V. POSTING OF NOTICE

A. Within sixty (60) business days after entry of the Consent Decree, Jack Marshall shall post 8½-inch-by-11-inch sized copies of the Notice attached as **Exhibit A** to the Consent Decree on all bulletin boards usually used by Defendant Jack Marshall for announcements, notices of

employment policy or practice changes to employees at its Monroeville, Alabama store and its headquarters in Tuscaloosa, Alabama.

B. Jack Marshall shall provide a copy of the signed Notice, and an indication of the date(s) and location(s) of its posting, to the attention of the Regional Attorney of EEOC's Birmingham District Office, at the address set forth above, within ten (10) days of the posting. Jack Marshall shall permit a representative of the EEOC to enter Jack Marshall's premises at its Monroeville, Alabama store at any time during normal business hours for the purpose of verifying compliance with this paragraph.

C. Jack Marshall shall take all reasonable steps to ensure that the posting is not altered, defaced, covered by any other material, or removed. Should the posted copy become altered, defaced, covered or removed, or become otherwise illegible, Jack Marshall shall re-post promptly a legible copy in the same manner as heretofore specified. The posted Notice shall be the same type, style and size as the printing on Exhibit A and shall bear the signature of the Vice-President of Operations of Jack Marshall Foods.

VI. DISPUTE RESOLUTION

A. In the event that either party to the Consent Decree believes that the other party has failed to comply with any provision(s) of the Consent Decree, the complaining party shall notify the other party of the alleged non-compliance within fifteen (15) days of discovery of the alleged non-compliance and shall afford the alleged non-complying party fifteen (15) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied.

B. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within fifteen (15) business days, the complaining party may apply to the Court for appropriate relief.

VII. EEOC REPORTS

A. Defendant Jack Marshall shall submit to the attention of the Regional Attorney, Equal Employment Opportunity Commission, Birmingham District Office, 1130 – 22nd Street South, Suite 2000, Birmingham, Alabama 35205 every 120 days following the effective date of the Consent Decree, a report containing the following: (1) the name(s) of all Monroeville, Alabama employees who filed complaints of, or reported, sexual misconduct; (2) the supervisor, manager or HR person to whom the complaint, or report, of sexual misconduct was made; (3) the date the complaint or report first was made, and (if not to Vice President of Operations) the date the complaint or report was received by the Vice President of Operations; (4) a description of the alleged underlying conduct, including whether the alleged harasser was a supervisor, manager or co-worker; (5) a statement that Jack Marshall was/was not aware of prior sexual misconduct by the accused harasser, or reports or allegations of sexual misconduct by the accused harasser; (6) whether the investigation is still pending, or concluded; (7) if concluded, Jack Marshall's findings and a description of any personnel (i.e, disciplinary, corrective, performance evaluation) or training action taken in response to the allegation and/or the finding. Jack Marshall should take all reasonable steps to discover information responsive to the seven (7) items including, but not limited, surveying staff at

headquarters in Tuscaloosa, Alabama, surveying supervisors and managers, and reviewing records.

B. If Jack Marshall is unaware of any sexual misconduct, or any reports or allegations of sexual misconduct, by the alleged harasser, it should so state. The report to the Regional Attorney should be signed and affirmed by the Vice President of Operations or the Director of Operations.

VIII. COSTS AND ATTORNEY FEES

Each party shall bear its own attorney's fees and costs incurred in this action up to the date of the entry of this Decree.

IX. DURATION OF DECREE

A. The duration of the Consent Decree shall be thirty (30) months from its entry. The Court shall retain jurisdiction over this action for the duration of the Consent Decree, during which Defendant Jack Marshall or the EEOC may petition this Court for compliance with the Consent Decree.

B. Should the Court determine that either party has not complied with this Consent Decree, appropriate relief, including extension of the Consent Decree for such period as may be necessary to remedy its non-compliance, may be ordered. Absent extension, the Consent Decree shall expire by its own terms at the end of thirty (30) months from the date of entry, without further action by the Parties.

C. The parties agree to the entry of the Consent Decree subject to final approval by the Court.

IT IS SO ORDERED THIS THE 14th day of May, 2010.

s/WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE

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EXHIBIT 1

NOTICE TO ALL JACK MARSHALL EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Jack Marshall Foods, Inc. d/b/a Jack Marshall Foods Civil Action Number: 1:09cv-160-WS-N, resolving a lawsuit filed by the Equal Employment Opportunity Commission (“EEOC”) against Jack Marshall Corporation, (“Jack Marshall”).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, *et seq.*, as amended, (“Title VII”), prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion, or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

In its lawsuit, the EEOC alleged that Jack Marshall tolerated a working environment at its Monroeville, Alabama store that was hostile to female employees, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). Jack Marshall denied these allegations.

To resolve the case, Jack Marshall and the EEOC have entered in to a Consent Decree which provides, among other things, that Jack Marshall: (1) will not discriminate on the basis of sex ; (2) will maintain records of prior complaints of sexual harassment; (3) will immediately investigate and resolve allegations of sexual harassment; (4) will require supervisors and managers to address allegations of sexual harassment; (5) will develop strong anti-harassment policies and procedures; (6) will hold supervisors and managers accountable for not complying with sexual harassment policies and procedures; and (7) will train all employees on preventing and addressing sexual harassment. Jack Marshall agrees that it will not retaliate against any person because she or he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree.

If you believe you have been discriminated against, you may contact the EEOC at (205) 212-2000. The EEOC charges no fees and has employees who speak languages other than English.

This Notice must remain posted for twelve (12) months from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the: Regional Attorney, EEOC Birmingham District Office, Ridge Park Place, Suite 2000, 1130 – 22nd Street South, Birmingham, Alabama 35205.

**FOR JACK MARSHALL FOODS, INC.
d/b/a Kentucky Fried Chicken**

DATE: _____